The Supreme Court of the United States

OCTOBER TERM, 1931.

No. 337.

THE WESTERN DISTRIBUTING COMPANY,
A CORPORATION,
APPELLANT,

VS.

THE PUBLIC SERVICE COMMISSION OF THE STATE OF KANSAS AND J. W. GREENLEAF, CHAS. D. SHUKERS, AND C. H. MONTGOMERY, AND THE CITY OF ELDORADO, KANSAS,
A MUNICIPAL CORPORATION,
APPELLEES.

JURISDICTIONAL STATEMENT.

(A) The jurisdiction of this court is sustained by Section 266 of the Judicial Code (28 U. S. C. A., Section 380), which provides inter alia

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying after notice and hearing, an interlocutory injunction in such case."

(B) The decree or order sought to be reviewed herein was entered by a statutory three-judge court consisting of Circuit Judge Phillips and District Judges Symes and Hopkins, on June 26, 1931. (Original R. 48, Printed

R. —). The application for appeal and assignment of errors was presented on the 18th day of July, 1931, and allowed on the 23rd day of July, 1931. (Original R. 68, Printed R. —)

(C) The bill of complaint filed by appellant, plaintiff below, against the appellees, defendants below, in the District Court of the United States, for the District of Kansas, alleged (Original R. 14, Printed R. —) diversity of citizenship, jurisdictional amount, the lack of adequate remedy at law; that plaintiff is the owner of a natural gas distribution system in the City of El Dorado, Kansas; that its schedule of rates are inadequate and do not yield a fair and reasonable return upon its property, used and useful in supplying natural gas to the citizens of said city, but on the contrary fail in the sum of approximately $40,000.00 per year to produce a return sufficient to pay operating expenses, without anything whatever for return or depreciation; that it applied to the said Public Service Commission for an increase in rates, which application was by the Commission denied; that said denial resulted in the taking of plaintiff's property and the use thereof without due process of law and denies to it the equal protection of the law, all in violation of the Constitution of the United States and especially the Fourteenth Amendment thereto. The bill of complaint contains an appropriate prayer for relief, asks for a restraining order and temporary injunction, as well as a permanent injunction, against the defendants from enforcing the order of the Commission of August 17, 1920, enforcing the existing rates,

and from interfering with the plaintiff putting in reasonable rates until such time as some lawful authority may approve a lawful schedule of rates. (Original R. 17, Printed R. —) Notice was served upon the Governor and Attorney General of the State of Kansas, as provided by said Section 266, and a three-judge court was assembled. The matter came on for hearing on May 18, at which time an order was entered allowing plaintiff to file an amended bill of complaint, and time was fixed for the filing of affidavits and counter-affidavits. The matter came on for further hearing, and on the 26th day of June, 1931, after the introduction of evidence and the hearing, findings of fact and conclusions of law were made by the court and a decree was entered denying the application for interlocutory injunction and dismissing the bill. (Original R. 48; Printed R. —)

(D) The provisions of the statute are so clear and familiar that a citation of authorities supporting the jurisdiction of the court below and direct appeal from the District Court to the Supreme Court, that a citation of authorities seems unnecessary. On both points, see Judicial Code Section 266, amended, and 28 U. S. C. A. 380, and cases cited thereunder. The amendment to this section extended the procedure requiring three judges to an order made by an administrative board or commission when such order is alleged in the application for the interlocutory injunction to be violative of the Federal Constitution. (Louisville R. Co. v. Alabama R. Commission, 208 Federal 35; Prendergast v. Telephone Company, 262 U. S. 43, 43 S. C. 466; Okla-

homa Natural Gas Company v. Russell, 261 U. S. 290, 43 S. C. 353; Van Wort Gas Light Company v. P. U. C., 299 Federal 670; C. R. I. & P. R. Co. v. U. S., 6 Federal (2d) 888; Smith v. Wilson, 273 U. S. 388, 47 S. C. 385.) The Supreme Court of the United States has jurisdiction of direct appeal from a decree under this section dismissing bill to enjoin State P. U. C. from enforcing statute where interlocutory injunction had been applied for and restraining order issued. (Clark v. Poor, 274 U. S. 554, 47 S. C. R. 702.)

For the convenience of the court, we are attaching hereto as Exhibit "A", complete index of the pleadings, orders, and proceedings had before the United States District Court.

Respectfully submitted,

ROBERT D. GARVER,
ROBERT STONE,
Solicitors for Appellant.

EXHIBIT "A".

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